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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91239589
Party	Plaintiff Maker's Mark Distillery, Inc.
Correspondence Address	MICHAEL D ADAMS MAYER BROWN LLP PO BOX 2828 CHICAGO, IL 60690-2828 UNITED STATES rassmus@mayerbrown.com, gbarcelona@mayerbrown.com, ah-intz@mayerbrown.com, ipdocket@mayerbrown.com, michaeladams@mayerbrown.com, xtang@mayerbrown.com 312-616-5600
Submission	Other Motions/Papers
Filer's Name	Daniel P. Virtue
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Signature	/Daniel P. Virtue/
Date	01/07/2019
Attachments	Reply ISO Extension - Opp. 91239589 .pdf(253940 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

MAKER'S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER'S WHISKEY COMPANY,

Applicant.

Opposition No. 91239589

Serial No. 87,383,989

Mark: BOWMAKER'S WHISKEY

REPLY IN SUPPORT OF MOTION FOR EXTENSION OF DISCOVERY PERIOD

Pursuant to TBMP § 502.02(b), Opposer Maker's Mark Distillery, Inc. ("Opposer") submits this reply in support of its November 27, 2018 motion to extend the discovery periods and to reset the testimony periods (the "Motion").

Prior to filing the Motion, Opposer contacted Applicant Bowmaker's Whiskey Company ("Applicant") and proposed to extend the case schedule since Opposer was still awaiting Applicant's response to the most recent draft settlement agreement exchanged by the parties. Despite advising Opposer that Applicant would respond to the correspondence regarding the proposed settlement and proposed new schedule by the end of November, Applicant's counsel never replied. Opposer followed up with counsel for Applicant again in early December and heard nothing. In fact, Opposer did not learn of Applicant's position on either the settlement or the extension until Applicant filed its December 17, 2018 opposition to the Motion (the "Opposition"). A copy of the email correspondence referenced in this paragraph is attached hereto as Exhibit A.

Applicant's Opposition makes the following allegations, all of which are false or without foundation: (i) that Opposer has not been expeditious in pursuing settlement, (ii) that Applicant has proceeded to build its case in view of the perceived impasse in settlement, and (iii) that Applicant's business has suffered as a result of the alleged delay in resolving this matter.

As noted above, Applicant has ignored the most recent settlement offer and consent request in favor of filing a lengthy brief on an issue that could be resolved on consent. This fact tends to show that is the Applicant who is engaged in tactics of delay and inefficiency, not Opposer. Applicant's claim that it has continued to proceed with discovery is also untrue; since Opposer served its objections to Applicant's first set of discovery requests on September 19, 2018, Applicant has not sought to meet and confer on any of the discovery topics or propounded any additional discovery. Similarly, Applicant has not answered a single one of Opposer's discovery requests. After filing a motion for summary judgment on December 21, 2018, Applicant summarily refuses to answer any of Opposer's Requests for Production, Requests for Admission, or Interrogatories, as shown in Applicant's December 26, 2018 Objections to Opposer's First Set of Discovery, a copy of which is attached hereto as Exhibit B. Finally, Applicant has offered no evidence that its business was or is suffering.

Opposer's Motion requests an extension of this proceeding for a period of ninety (90) days. For the reasons stated above, Opposer maintains that request.

Respectfully submitted,

MAKER'S MARK DISTILLERY, INC.

Dated: January 7, 2019

By: /s/ Richard M. Assmus
Michael D. Adams
Richard M. Assmus
MAYER BROWN LLP

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that, on January 7, 2019, I caused a copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR EXTENSION OF DISCOVERY PERIOD** to be served upon Bowmaker's Whiskey Company by e-mail at the following addresses:

tbreiner@bbpatlaw.com, elisedelatorre@bbpatlaw.com, docketclerk@bbpatlaw.com

With courtesy copies sent by USPS Express mail to Bowmaker's Whiskey Company at the following address:

Theodore A. Breiner
Breiner & Breiner LLC
115 North Henry Street
Alexandria, VA 22314

Dated: January 7, 2019

/s/ Richard M. Assmus
Richard Assmus
Attorney for Opposer
Maker's Mark Distillery, Inc.

EXHIBIT A

Assmus, Richard M.

From: Assmus, Richard M.
Sent: Wednesday, December 05, 2018 2:39 PM
To: 'Ted Breiner'
Cc: Adams, Michael D.
Subject: RE: Maker's Mark v. Bowmaker's Whiskey, Opposition No. 91239589 [IWOV-AME.FID2124370]

Ted—

Checking in on your and your client's review of the proposed settlement.

Rich

+++++

Richard M. Assmus
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8623
rassmus@mayerbrown.com

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Tuesday, November 27, 2018 3:12 PM
To: Assmus, Richard M. <RAssmus@mayerbrown.com>
Cc: Adams, Michael D. <michaeladams@mayerbrown.com>
Subject: RE: Maker's Mark v. Bowmaker's Whiskey, Opposition No. 91239589 [IWOV-AME.FID2124370]

****EXTERNAL SENDER****

Rich,

I have been out of town on business the last two days. We will review your correspondence and be in touch. The next few days are hectic and it may not be until the end of the week, but wanted to touch base.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Elise de la Torre at 703-684-6885 or e-mail Elisedelatorre@bbpatlaw.com if you need assistance.

From: Assmus, Richard M. <RAssmus@mayerbrown.com>

Sent: Monday, November 26, 2018 6:19 PM

To: Ted Breiner <TBreiner@BBPatLaw.com>

Cc: Adams, Michael D. <michaeladams@mayerbrown.com>

Subject: Maker's Mark v. Bowmaker's Whiskey, Opposition No. 91239589 [IWOV-AME.FID2124370]

Ted—

Attached please find our first set of discovery requests.

In light of the coming deadlines (expert disclosures and discovery closing), we intend to move the TTAB for an extension of all deadlines by 3 months. Let us know if we may do so on consent for that period or some shorter period you suggest.

We last heard from you on settlement in mid-October. Has your client had an opportunity to review our proposal dated October 17? As we have discussed, we believe this is a matter that can be resolved quickly.

Rich

+++++

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EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MAKER'S MARK DISTILLERY, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91239589
)	
)	
)	Serial No. 87/383,989
BOWMAKER'S WHISKEY COMPANY,)	Mark: BOWMAKER'S WHISKEY
)	
Applicant.)	

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APPLICANT'S OBJECTIONS TO
OPPOSER'S FIRST SET OF DISCOVERY

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure and Rules 2.120 and 2.127(d) of the Trademark Rules of Practice, applicant Bowmaker's Whiskey Company ("Applicant") hereby responds to opposer Maker's Mark Distillery, Inc.'s ("Opposer") first set of discovery, namely, Opposer's First Set Of Requests For Admission To Bowmaker's Whiskey Company; Opposer's First Set Of Interrogatories To Bowmaker's Whiskey Company; and Opposer's First Set Of Requests For Production of Documents And Things To Bowmaker's Whiskey Company, as set forth hereafter.

Applicant objects to responding to Opposer's discovery at this time on the grounds that when a party

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timely files a motion for summary judgment, the case is suspended with respect to all matters not germane to the motion and the Board treats the proceeding as if it has been suspended as of the filing date of the potentially dispositive motion, and the suspension tolls the time to respond to outstanding discovery requests. 37 CFR §2.127(d); TBMP §510.03(a). Applicant has timely filed a motion for summary judgment in this case on December 21, 2018 and the case is suspended, including tolling the time for Applicant to respond to Opposer's above-referenced discovery.

Respectfully submitted,

BOWMAKER'S WHISKEY COMPANY

By: /Theodore A. Breiner/
Theodore A. Breiner
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tbreiner@bbpatlaw.com

December 26, 2018

Attorneys for Applicant

Opposition No. 91239589

CERTIFICATE OF SERVICE

It is hereby certified that on this 26th day of
December, 2018, a true copy of the foregoing paper entitled-

APPLICANT'S OBJECTIONS TO
OPPOSER'S FIRST SET OF DISCOVERY

was served by email on -

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/Theodore A. Breiner/

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